

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION

Devon Neal,	)	Case No. 5:21-cv-02745-DCC
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Major Scott Weeks and Sgt. Tracey	)	
Miller,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court upon Plaintiff's complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings and a Report and Recommendation ("Report"). On March 15, 2022, Defendants filed a motion for summary judgment. ECF No. 41. On April 27, 2022, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir.1975), advising Plaintiff of the summary judgment/dismissal procedure and the possible consequences if he failed to respond adequately. ECF No. 46. On May 9, 2022, Plaintiff filed a Reply/Motion to Appoint Counsel, stating that he wishes to continue his case, but that he needs legal help with the next steps of his case. ECF No. 48. The Magistrate Judge denied Plaintiff's Motion to Appoint Counsel on May 11, 2022, but provided Plaintiff additional time to respond to Defendants' motion for summary judgment. ECF No. 50. Plaintiff failed to respond by

the new deadline of June 10, 2022. On June 21, 2022, the Magistrate Judge issued a Report recommending that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b) and the motion for summary judgment be found as moot. ECF No. 53. On June 27, 2022, Plaintiff filed a Response in Opposition to Defendants' motion for summary judgment. ECF No. 56. Defendants filed a Reply on July 5, 2022. ECF No. 57. This case was reassigned to the undersigned on August 8, 2022, and this Court found the Report moot and recommitted the matter to the Magistrate Judge for evaluation of Plaintiff's claims in light of his response. ECF Nos. 59, 61. On December 2, 2022, the Magistrate Judge issued another Report recommending that Defendants' motion for summary judgment be granted. ECF No. 65. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has not filed objections to the Report and the time to do so has lapsed.<sup>1</sup>

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or

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<sup>1</sup> The Court notes that the Report was returned to this Court as undeliverable. ECF No. 67. The envelope was marked "released." *Id.* Plaintiff was specifically warned that it was his responsibility to keep the Court updated as to any change of address. ECF No. 9.

recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

As stated above, Plaintiff has not objected to the Magistrate Judge’s Report, and although apparently “released,” he has not contacted the Court to update his current address. Accordingly, after considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the recommendation of the Magistrate Judge. The motion for summary judgment [41] is **GRANTED** and this action is **DISMISSED** with prejudice.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

February 3, 2023  
Spartanburg, South Carolina